

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BACKPAGE.COM, LLC,

Plaintiff,

v.

ROB MCKENNA, Attorney General of the
State of Washington; RANDY J. FLYCKT,
Adams County Prosecuting Attorney;
BENJAMIN C. NICHOLS, Asotin County
Prosecuting Attorney; ANDREW K. MILLER,
Benton County Prosecuting Attorney; GARY
A. RIESEN, Chelan County Prosecuting
Attorney; DEBORAH S. KELLY, Clallam
County Prosecuting Attorney; ANTHONY F.
GOLIK, Clark County Prosecuting Attorney;
REA L. CULWELL, Columbia County
Prosecuting Attorney; SUSAN I. BAUR,
Cowlitz County Prosecuting Attorney;
STEVEN M. CLEM, Douglas County
Prosecuting Attorney; MICHAEL SANDONA,
Ferry County Prosecuting Attorney; SHAWN P.
SANT, Franklin County Prosecuting Attorney;
MATTHEW L. NEWBERG, Garfield County
Prosecuting Attorney; ANGUS LEE, Grant
County Prosecuting Attorney; H. STEWARD
MENEFEE, Grays Harbor County Prosecuting
Attorney;

(Continued on Page 2)

No.

**DECLARATION OF CARL
FERRER IN SUPPORT OF
BACKPAGE.COM'S MOTION
FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

(Continued from Page 1)

1 GREGORY M. BANKS, Island County)
 2 Prosecuting Attorney; SCOTT W.)
 3 ROSEKRANS, Jefferson County Prosecuting)
 4 Attorney; DAN SATTERBERG, King County)
 5 Prosecuting Attorney; RUSSELL D. HAUGE,)
 6 Kitsap County Prosecuting Attorney;)
 7 GREGORY L. ZEMPEL, Kittitas County)
 8 Prosecuting Attorney; LORI L. HOCTOR,)
 9 Klickitat County Prosecuting Attorney;)
 10 JONATHAN L. MEYER, Lewis County)
 11 Prosecuting Attorney; JEFFREY S.)
 12 BARKDULL, Lincoln County Prosecuting)
 13 Attorney; MICHAEL K. DORCY, Mason)
 14 County Prosecuting Attorney; KARL F.)
 15 SLOAN, Okanogan County Prosecuting)
 16 Attorney; DAVID J. BURKE, Pacific County)
 17 Prosecuting Attorney; THOMAS A.)
 18 METZGER, Pend Oreille County Prosecuting)
 19 Attorney; MARK LINDQUIST, Pierce)
 20 County Prosecuting Attorney; RANDALL K.)
 21 GAYLORD, San Juan County Prosecuting)
 22 Attorney; RICHARD WEYRICH, Skagit)
 23 County Prosecuting Attorney; ADAM N.)
 24 KICK, Skamania County Prosecuting)
 25 Attorney; MARK K. ROE, Snohomish)
 26 County Prosecuting Attorney; STEVEN J.)
 27 TUCKER, Spokane County Prosecuting)
 Attorney; TIMOTHY D. RASMUSSEN,)
 Stevens County Prosecuting Attorney; JON)
 TUNHEIM, Thurston County Prosecuting)
 Attorney; DANIEL H. BIGELOW,)
 Wahkiakum County Prosecuting Attorney;)
 JAMES L. NAGLE, Walla Walla County)
 Prosecuting Attorney; DAVID S.)
 McEACHRAN, Whatcom County)
 Prosecuting Attorney; DENIS P. TRACY,)
 Whitman County Prosecuting Attorney;)
 JAMES P. HAGARTY, Yakima County)
 Prosecuting Attorney,)
)
 Defendants, in their)
 official capacities.)
)

1 I, Carl Ferrer, declare and state as follows:

2 1. I am the Vice President of Sales and Marketing for Backpage.com, LLC
3 (“Backpage.com”). I have personal knowledge of the matters set forth in this declaration
4 and am competent to testify to them.

5 2. Backpage.com operates an online classified advertising service, located at
6 www.backpage.com. It is estimated to be the second largest online classified advertising
7 service in the United States.

8 3. Backpage.com offers its service in all fifty states and the District of
9 Columbia.

10 4. Users post millions of classified ads on the Backpage.com website. By way
11 of example, in the month of April 2012, users posted more than 3.3 million ads on
12 Backpage.com.

13 5. Users may post ads in a multitude of categories (*e.g.*, local places,
14 community, buy/sell/trade, automotive, musician, rentals, real estate, jobs, forums, dating,
15 adult and services) and subcategories. A true and correct copy of the home page for the
16 Backpage.com website in Seattle is attached hereto as **EXHIBIT A** and is available at
17 <http://seattle.backpage.com/>.

18 6. Backpage.com allows users to post ads for free in the vast majority of its
19 categories. Backpage.com charges a range of approximately \$5-10 for users to post ads in
20 the adult category and \$1 for users to post ads in the dating category, which must be paid by
21 credit card to discourage abusive posting. This also provides information to help identify
22 and track users who misuse the site.

23 7. Backpage.com prohibits illegal content and activity on its service, and
24 especially condemns all forms of human trafficking and child exploitation. We take
25 numerous steps to prevent any such abuse and misuse of the site.

26 8. Our Terms of Use prohibit ads for illegal services or posting “any material
27 . . . that exploits minors in any way.” The Terms of Use state in part:

User Conduct:

Without limitation, you agree to refrain from the following actions while using the Site: . . .

2. Transmitting any information, data, text, files, links, software, chats, communication or other materials that is unlawful, false, misleading, harmful, threatening, abusive, invasive of another's privacy, harassing, defamatory, vulgar, obscene, hateful or racially or otherwise objectionable, including without limitation material of any kind or nature that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, provincial, national, or international law or regulation, or encourage the use of controlled substances; . . .

4. (a) Posting adult content or explicit adult material unless: (i) such material is specifically permitted in designated adult categories and permitted under applicable federal, state, and local law; and (ii) you are at least 18 years of age or older and not considered to be a minor in your state of residence;

(b) Posting, anywhere on the Site, obscene or lewd and lascivious graphics or photographs which depict genitalia or actual or simulated sexual acts, as determined in the sole discretion of backpage.com;

(c) Posting any solicitation directly or in "coded" fashion for any illegal service exchanging sexual favors for money or other valuable consideration;

(d) Posting any material on the Site that exploits minors in any way;

(e) Posting any material on the Site that in any way constitutes or assists in human trafficking.

5. Posting any ad for products or services, use or sale of which is prohibited by any law or regulation;

A true and correct copy of the complete Terms of Use is attached hereto as **EXHIBIT B** and is available at <http://seattle.backpage.com/online/classifieds/Terms>.

9. In addition, before a user may post an ad in the adult or dating categories on Backpage.com, he or she must review and agree to specific Posting Rules, which emphasize that postings for commercial sex acts are prohibited; that all forms of human trafficking and exploitation are prohibited and will not be tolerated; and that any potential child exploitation will be reported for law enforcement investigation. The Posting Rules state:

Posting Rules

You agree to the following when posting in this category:

- I will not post obscene or lewd and lascivious graphics or photographs which depict genitalia, actual or simulated sexual acts or naked images;

- I will not post any solicitation directly or in "coded" fashion for any illegal service, including exchanging sexual favors for money or other valuable consideration;
- I will not post any material on the Site that exploits minors in any way;
- I will not post any material on the Site that in any way constitutes or assists in human trafficking;
- I am at least 18 years of age or older and not considered to be a minor in my state of residence.

Any post exploiting a minor in any way will be subject to criminal prosecution and will be reported to the Cybertipline for law enforcement.

Postings violating these rules and our Terms of Use are subject to removal without refund.

A true and correct copy of these Posting Rules is attached hereto as **EXHIBIT C** and is available at

<http://posting.seattle.backpage.com/gyrobase/classifieds/PostAdPPI.html/sea/posting.seattle.backpage.com/?section=4381&category=4443&u=sea&serverName=posting.seattle.backpage.com&superRegion=Seattle>.

10. Users seeking to post or view material in the adult or dating categories must also verify that they are at least 18 years old. If a user clicks on either category, he or she sees a page explaining and requiring this age verification. A true and correct copy of this verification page is attached hereto as **EXHIBIT D**, and is available at <http://seattle.backpage.com/MenSeekWomen/classifieds/Disclaimer?category=4454>, and other locations within the Backpage.com website. This page also cautions users to report any posting that may relate to suspected exploitation of minors or human trafficking and contains a link to websites of the National Center for Missing and Exploited Children and the National Human Trafficking Resource Center. Attached as **EXHIBIT E** is a true and correct copy of the page – entitled Stop Trafficking – that appears through this link, and is available at <http://www.backpage.com/en-us/online/classifieds/PopUp?page=StopTrafficking>).

11. Users may report any ad by clicking a link that appears in the upper right-hand corner of each ad on the site. This calls up a page that asks users to identify any

1 suspected illegal or inappropriate ads, again emphasizing that if the user's concern is a
 2 possible threat to a child or child exploitation, he or she should also contact
 3 abuse@backpage.com. Attached as **EXHIBIT F** is a true and correct copy of the "Report
 4 Ad" page on the website, which is also available at
 5 <http://posting.seattle.backpage.com/online/classifieds/ReportAd?oid=9616975>.
 6 Backpage.com reviews ads that are flagged by users to determine whether they should be
 7 removed or reported to appropriate authorities.

8 12. Information and links about human trafficking and child exploitation appear
 9 throughout the Backpage.com website. For example, in addition to links provided at
 10 various places in the site to the Cybertipline (of the National Center for Missing and
 11 Exploited Children) and abuse@Backpage.com, the site alerts users to call 211 "if you are
 12 exploited or need help." See **EXHIBIT G**, the form users must fill out to write an ad for
 13 the website. In addition, links to a page entitled User Safety are available throughout the
 14 website, and that page states:

15 **Human Trafficking**

16 Over the past 15 years, "trafficking in persons" and "human trafficking" have
 17 been used as umbrella terms for activities involved when someone obtains or
 holds a person in compelled service.

18 The United States government considers trafficking in persons to include all of
 19 the criminal conduct involved in forced labor and sex trafficking, essentially the
 20 conduct involved in reducing or holding someone in compelled service. Under the
 21 Trafficking Victims Protection Act as amended (TVPA) and consistent with the
 22 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons,
 23 Especially Women and Children (Palermo Protocol), individuals may be
 trafficking victims regardless of whether they once consented, participated in a
 crime as a direct result of being trafficked, were transported into the exploitative
 situation, or were simply born into a state of servitude. Despite a term that seems
 to connote movement, at the heart of the phenomenon of trafficking in persons
 are the many forms of enslavement, not the activities involved in international
 transportation.

24 For more information on Human Trafficking, please visit <http://www.state.gov/g/tip/>.

25 To report a potential victim of Human Trafficking, or if you are a victim yourself or
 26 you know someone whom you suspect may be, please call the National Human
 Trafficking Resource Center (NHTRC) hotline at 1-888-3737-888, or visit:
 27 [http://www.polarisproject.org/what-we-do/national-human-trafficking-
 hotline/report-a-tip](http://www.polarisproject.org/what-we-do/national-human-trafficking-hotline/report-a-tip).

Child Exploitation

The National Center for Missing and Exploited Children helps not only locate missing kids, but also helps children that are victims of sexual exploitation of any kind.

If you've seen a missing child, or a child that is being victimized, please take action and make a report to the CyberTipline: www.cybertipline.com.

For more information on the National Center, please visit: www.missingkids.com.

A true and correct copy of the User Safety page is attached hereto as **EXHIBIT H**, and is available at <http://seattle.backpage.com/online/classifieds/UserSafety>.

13. Backpage.com also employs extensive, voluntary monitoring measures to prevent and remove improper user postings. Among these measures, we operate an automated filtering system that scans the overwhelming majority of potential posts for “red-flag” terms, phrases, codes, email addresses, URLs and IP addresses. The list of terms used in this automated filtering currently exceeds 26,000, and it is regularly updated. In addition, Backpage.com operates a two-tiered manual (human) review system of nearly all content submitted for posting to the adult and dating categories. The first level manual review assesses a proposed post before it is allowed to appear on Backpage.com and endeavors to prevent postings of illegal conduct and other prohibited activity. The second level manual review examines nearly every post in the adult and dating categories that appears on the website as a double-check for potential illegal activity. Overall, more than 100 people (over 80% of all Backpage.com workers) are engaged in monitoring of user submissions.

14. Through its monitoring and reporting systems, Backpage.com blocked, banned or removed more than 1 million user submissions and posts in April 2012, and also referred approximately 400 posts to the National Center for Missing and Exploited Children (“NCMEC”) in the same month. To continuously try to improve our monitoring and reporting efforts, we also meet frequently with NCMEC staff to review and discuss reports, progress and ideas for better combating child exploitation over the Internet.

1 15. In addition to its prevention efforts, Backpage.com collaborates and
2 cooperates extensively with law enforcement officials with regard to investigations and
3 prosecutions. Law enforcement agents (federal, state and local) with whom we deal on a
4 daily basis regularly thank Backpage.com for our prompt and thorough assistance.
5 Although we receive multiple law enforcement subpoenas per day, we respond to the
6 majority within less than 24 hours. We also voluntarily employ tools to conduct additional
7 Internet-wide research to provide law enforcement with further information to assist in
8 rescuing victims or arresting and prosecuting perpetrators. Backpage.com also distributes
9 law enforcement guides, allows posts of public service announcements by law enforcement,
10 removes posts when requested by law enforcement, and blocks posts from users on the
11 advice of law enforcement. In addition, Backpage.com personnel provide testimony at
12 trials and hearings as requested.

13 16. I understand that the pending new Washington State law, SB 6251, makes it
14 a felony crime for parties to knowingly publish, disseminate or display (online or in print)
15 any content provided by a third-party user that contains an explicit or "implicit" offer of
16 any sexual contact for "something of value" in Washington if the content includes an image
17 that turns out to be a minor and to "cause directly or indirectly" the publication,
18 dissemination or display of any content provided by a third-party user that contains an
19 explicit or "implicit" offer of any sexual contact for "something of value" in Washington if
20 the content includes an image that turns out to be a minor. I also understand that the law
21 expressly states that it is not a defense that a defendant did not know that the image was of
22 a minor, and the only defense stated in the law is for a defendant to obtain certain
23 government or educational identification for the person in the image before publishing,
24 disseminating or displaying the post.

25 17. SB 6251 poses an impossible burden on Backpage.com and other websites
26 and online service providers. Advertisements for adult services can appear in numerous
27 categories in online classified advertising sites such as Backpage.com, including in

1 categories for dating, massage and others. More generally, countless websites on the
2 Internet have user postings containing photographs and referring to sexual topics, including
3 social networking sites, dating sites, discussion forums and chat rooms, and many others.

4 18. Website and other online service providers seeking to comply with the law
5 have few choices. They could undertake to review individually each user posting to
6 determine if it might fall within the scope of the law, but we have no way to know what
7 prosecutors may consider to be postings containing “implicit” offers of sexual contact for
8 “something of value.” Even if we could identify such postings, we would have to review
9 individually each third-party user post before it goes live to avoid inadvertent violation of
10 the law. Moreover, users can post ads in other states for adult services or sexual activities
11 that could take place in Washington, and so we would have to review postings from across
12 the country to ensure that none violates SB 6251.

13 19. Alternatively, because it is impossible to determine what is an “implicit”
14 offer for commercial sex, online service providers could require identification from *all*
15 users who submit postings containing a person’s photograph (and retain copies of the
16 identification, apparently indefinitely). I expect that most online users would be unwilling
17 to comply with such a requirement because of the burden and/or because of privacy
18 concerns.

19 20. If SB 6251 is meant to require in-person verification of identification, this
20 would be a practical impossibility for Backpage.com and innumerable other online service
21 providers, which have no physical location in Washington State and certainly not in every
22 city and town in the state where users can access the Internet and may want to post content.¹


23 21. Given the impossible burdens and the risks imposed by SB 6251, the only
24 other alternative available to Backpage.com, other online service providers, and print
25 publishers is to eliminate all user postings containing photographs and alluding to sexual
26

27 ¹ The *Seattle Weekly* has an office in Seattle. Although the same parent company owns the *Seattle Weekly* and Backpage.com, they are separate entities.

1 topics. This would eliminate vast amounts of permissible adult-oriented speech, but it may
2 be the most likely result if SB 6251 takes effect.

3 I declare under penalty of perjury of the laws of the United States that foregoing is
4 true and correct.

5 Signed at Dallas, Texas, this 3rd day of June, 2012

6
7 
8 Carl Ferrer